

IN THE CHANCERY COURT OF ANDERSON COUNTY, TENNESSEE  
FOR THE SEVENTH JUDICIAL DISTRICT AT CLINTON, TENNESSEE

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STATE OF TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 01-CH-1247
	)	
WILSON TOURS, INC., a Tennessee	)	
corporation, and MICHAEL A. WILSON,	)	
individually and as President of	)	
WILSON TOURS, INC.,	)	
	)	
	)	
Defendants.	)	

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**AGREED FINAL JUDGMENT**

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Plaintiff, the State of Tennessee by and through, Paul G. Summers, the Attorney General and Reporter, and on behalf of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendants, Wilson Tours, Inc., a Tennessee corporation, and Michael A. Wilson, individually and as President of Wilson Tours, Inc. (collectively referred to as “Defendants”), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. This is an Agreed Final Judgment for which execution may issue. This Agreed Final Judgment only resolves those matters set forth in the State’s Complaint. Defendants hereby accept and waive any claims of defect in connection with service of process issued on the Defendants in this cause by the State.

**1. DEFINITIONS**

As used in this Agreed Final Judgment, the following words or terms shall have the following meanings:

- 1.1 “Agreed Final Judgment”, “Judgment” or “Order” shall refer to this document entitled Agreed Final Judgment in the matter of *State of Tennessee v. Wilson Tours, Inc., a*

*Tennessee corporation, and Michael A. Wilson, individually and as President of Wilson Tours, Inc.*

- 1.2 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.4 “Defendants” shall refer to Wilson Tours, Inc. and Michael A. Wilson, and/or any and all officers, owners, employees, agents and representatives of Wilson Tours, Inc. and Michael A. Wilson.
- 1.5 “Plaintiff”, “State of Tennessee”, or “Attorney General” shall refer to the Office of the Tennessee Attorney General and Reporter.
- 1.6 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the Defendants for the purposes of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Defendants agree to pay all court costs and attorneys’ fees and any costs associated with any petitions to enforce any provision of this Order against Defendants.

## **3. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Judgment is solely in the Chancery Court of Anderson County, Tennessee.

## **4. PERMANENT INJUNCTION**

4.1 Accordingly, it is hereby agreed that upon approval of the Court, Defendants Wilson Tours, Inc. and Michael A. Wilson shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.2 Defendants shall be prohibited from directly or indirectly engaging in any unfair or deceptive acts or practices in the conduct of their business. Defendants further shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a), (b)(5), (b)(12), (b)(19) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.3 Defendants shall fully comply with all provisions of all statutes relating to the offering of travel goods or services in the State of Tennessee, including but not limited to Tenn. Code Ann. § 47-18-120.

4.4 Defendant Michael A. Wilson shall not directly or indirectly own, operate or manage any business or other entity that provides or offers travel or tour related goods or services to consumers.

4.5 Defendants shall be prohibited from directly or indirectly representing to consumers that consumers are guaranteed a partial or full refund for goods and services, if such is not the case.

4.6 Defendants shall be prohibited from directly or indirectly representing or implying that goods or services have characteristics, uses or benefits that they do not have.

4.7 Defendants shall be prohibited from advertising goods or services without intent to sell them as advertised.

4.8 Defendants shall be prohibited from advertising goods or services with intent not to supply reasonably expected public demand.

4.9 Defendants shall be prohibited from directly or indirectly representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.

4.10 Defendants shall be prohibited from directly or indirectly causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction.

4.11 Defendants shall be prohibited from directly or indirectly representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve.

4.12 Defendants shall fully respond in writing to all consumer complaints or inquiries within ten (10) days of receipt of a consumer complaint or inquiry from the consumer or any complaints forwarded by any state, local or federal agency or entity, including but not limited to the Division of Consumer Affairs.

4.13 Defendants shall provide a full monetary refund of all monies paid for any goods or services within ten (10) days of a consumer's request for a refund if the goods or services purchased have not been full provided in the manner promoted. Further, Defendants shall be required to provide proof that refund payments were made within the required 10-day payment period. Upon request by the Division of Consumer Affairs, Defendants shall provide proof of refund payments made within 3 days of receipt of such a request for information.

4.14 Defendants shall make and retain records of all consumer complaints or inquiries made in writing or orally in person or by telephone. Said records shall be immediately made available to the State upon request.

4.15 Defendants shall not directly or indirectly represent, promote, advertise or otherwise offer for purchase goods or services if Defendants will not deliver or provide the goods or services.

4.16 Defendants shall be prohibited from making any payment to any person for goods or services by using a check backed by insufficient funds.

4.17 Defendants shall be prohibited from directly or indirectly failing to provide goods or services in accordance with their promoted terms to consumers.

4.18 Defendants shall be prohibited from requiring, collecting or receiving any form of pre- or advance payment for goods or services from consumers. However, it is not a violation of this section for Defendant, Michael A. Wilson, to accept payments on behalf of his employer as long as Mr. Wilson does not receive any direct payments from consumers.

## **5. RESTITUTION**

5.1 The State acknowledges that the individual Defendant, Michael A. Wilson, has filed Chapter 7 bankruptcy. In light of this fact, the State shall seek restitution for consumers through the

bankruptcy court. The State maintains any and all rights and actions it has to collect said funds to the fullest extent permitted under the bankruptcy laws.

5.2 The corporate Defendant, Wilson Tours, Inc. represents and warrants to the State that it has ceased operating and has no property of any kind, real or personal, tangible or intangible, that may be applicable or subject to the payment of its debts. Defendant Wilson Tours, Inc. acknowledges that the State expressly relies upon this representation and warranty and the financial affidavit, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

## **6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE**

6.1 Defendants shall pay the sum of Eight thousand two hundred sixty-nine and 36/100 Dollars (\$ 8,269.36) to the Office of the State of Tennessee Attorney General and Reporter for its attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General.

6.2 The State acknowledges that the individual Defendant, Michael A. Wilson has filed Chapter 7 bankruptcy. The State maintains any and all rights and actions it has to collect said funds to the fullest extent permitted under the bankruptcy laws.

## **7. CIVIL PENALTIES**

7.1 Defendant, Michael Wilson shall pay the sum of Five Thousand and 00/100 Dollars (\$ 5,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. §§ 47-18-108(b)(3) and 47-18-125. The State acknowledges that the individual Defendant has filed Chapter 7 bankruptcy. The State maintains any and all rights and actions it has to collect said funds to the fullest extent permitted under the bankruptcy laws.

7.2 Defendant, Wilson Tours, Inc. shall pay the sum of Five Thousand and 00/100 Dollars (\$ 5,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. §§ 47-18-108(b)(3) and 47-18-125. The corporate Defendant, Wilson Tours, Inc., represents and warrants to the State that it has ceased operating and has no property of any kind, real or personal, tangible or intangible, that may be applicable or subject to the payment of its debts.

Defendant Wilson Tours, Inc. acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

## **8. MONITORING AND COMPLIANCE**

8.1 Upon request, Defendants agree to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Judgment. Defendants shall make any requested information available within one (1) week of the request, at the Office of the Attorney General in Nashville, Tennessee or at any other location within the State of Tennessee that is mutually agreeable in writing to Defendants and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

8.2 The State of Tennessee has the right to test shop Defendants for the purpose of confirming compliance with this Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendants. Further, the State of Tennessee may record any or all aspects of its visit(s) to Defendants in audio or video form without notice to Defendants. Further, Defendants agree to void any sale that is commenced by test shoppers at the conclusion of the sale upon notification that it was a test shopping conducted by the State of Tennessee.

8.3 Without limiting the scope of paragraph 8.1, upon default of any monetary provision of this Agreed Final Judgment, Defendants agree to provide testimony under oath for the purposes of determining Defendants' financial status and to locate any assets available to the State for execution and seizure to fulfill the Defendants' monetary obligations under this Agreed Final Judgment. Defendants shall be required to pay all costs associated with court reporting and transcription of such sworn statements. Defendants also agree within five (5) business days to provide written sworn responses to the State's request for documents or other information in the event of default.

## **9. PRIVATE RIGHT OF ACTION**

9.1 Pursuant to Tenn. Code Ann. § 47-18-109 and 47-18-108(e), nothing in this Judgment shall be construed to affect any private right of action that a consumer or any other person may hold against Defendants.

#### **10. PENALTY FOR FAILURE TO COMPLY**

10.1 Defendants understand that upon execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Defendants understand that any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Defendants agree to pay all court costs and attorneys' fees associated with any petitions to enforce this Judgment against the Defendants.

#### **11. REPRESENTATIONS AND WARRANTIES**

11.1 Defendants represent and warrant that the execution and delivery of this Judgment is their free and voluntary act, that this Judgment is the result of good faith negotiations, and that Defendants agree that the Judgment and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Judgment in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office, the Department of Commerce and Insurance or the Division of Consumer Affairs to procure this Judgment.

11.2 Defendants represent that signatories to this Judgment have authority to act for and bind the Defendants.

11.3 Defendant Wilson Tours, Inc. represents and warrants that it has ceased operation in the State of Tennessee. Further, Wilson Tours, Inc. represents and warrants that it has dissolved and does not maintain any corporate assets nor has it been conducting business since November 2000. Defendant Wilson Tours, Inc. acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to

move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

11.4 Defendants represent and warrant to the State of Tennessee that they have no property of any kind, real or personal, tangible or intangible, that may be applicable or subject to the payment of their debts. Michael A. Wilson's bankruptcy petition, complete schedules and supporting documentation including any amendments thereto are specifically incorporated by reference. Attached as Exhibit A are Schedules A, B, C, D, I and J, Summary of Schedules, Declaration Concerning Debtor's Schedules, Statement of Financial Affairs, Chapter 7 Individual Debtor's Statement of Intention, Disclosure of Compensation of Attorney for Debtor and Amendment to Schedule F - Creditors Holding Unsecured Non-Priority Claim filed on behalf of Michael A. Wilson in the bankruptcy proceedings of the United States Bankruptcy Court No. 00-34858 for the Eastern District of Tennessee regarding his financial status. Defendants further acknowledge that the State expressly relies upon this representation and warranty and the financial information provided, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

11.5 Defendants will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

11.6 Neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Defendants.

11.7 Acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendants' advertising or other business practices.

11.8 Within thirty (30) days of the entry of this Judgment, Defendant Wilson Tours, Inc. shall submit a copy of this Judgment to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Defendants as an agent, independent contractor and who are



involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Judgment, Defendants shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Judgment.

11.9 Defendants Wilson Tours, Inc. and Michael A. Wilson warrant and represent that they are the proper parties to this Judgment. Defendants further acknowledge that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

11.10 Wilson Tours, Inc. and Michael A. Wilson represent that they are the true legal names of the entities entering into this Judgment. Defendants understand that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Judgment, and request that Defendants be held in contempt, if the State so elects.

11.11 This Judgment may only be enforced by the parties hereto.

11.12 The titles and headers to each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment.

11.13 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

11.14 This Judgment constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State’s Complaint. This Judgment is limited to resolving only matters set forth in the State’s Complaint.

11.15 Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Judgment shall not bar the State, a District Attorney General or other governmental entity from enforcing laws, regulations or rules against Defendant.

11.16 This Judgment shall be binding and effective against Defendants upon Defendants’ execution of the Judgment. In the event the court does not approve this Judgment, this Judgment shall be of no force and effect against the State of Tennessee.

11.17 Defendants have been advised of their right to legal counsel in connection with this matter. If Defendants decline to obtain the assistance of legal counsel, Defendants have expressly waived their right to counsel by executing this Judgment.

11.18 Nothing in this Judgment constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

11.19 Defendants waive and will not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the conduct described herein and in the State's Complaint, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Defendants have agreed to pay under the terms of this Judgment is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

11.20 No waiver, modification, or amendment of the terms of this Agreed Final Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

11.21 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Agreed Final Judgment shall not be deemed a waiver of any of the provisions of this Agreed Final Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreed Final Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

11.22 If any clause, provision or section of this Agreed Final Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreed Final Judgment and this Agreed Final Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

## **12. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

12.1 Nothing in this Judgment shall be construed as relieving Defendants of the obligation to comply with all state or federal laws, regulations or rules.

## **13. FILING OF JUDGMENT**

13.1 Defendants hereby waive any and all rights which it may have to be heard in connection with judicial proceedings upon the Order. Defendants agree to pay all costs of filing such Complaint and Judgment. The Defendants agree that they consent to the entry of this Order without further notice.

## **14. APPLICABILITY OF JUDGMENT TO DEFENDANT AND THEIR SUCCESSORS**

14.1 Defendants Wilson Tours, Inc. and Michael A. Wilson agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to Wilson Tours, Inc. and Michael A. Wilson and to each of their officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities they control, manage or operate, their successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

## **15. NOTIFICATION TO STATE**

15.1 Any notices required to be sent to the State or the Defendants by this Order shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document.

The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 741-1671

For the Defendant:

Michael A. Wilson, President  
Wilson Tours, Inc.  
P.O. Box 101  
Clinton, Tennessee 37717

For Defendant Michael Wilson:

Michael Wilson

P.O. Box 101  
Clinton, Tennessee 37717

15.2 For five (5) years following execution of this Order, Defendants shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any other changes in Defendants' status that may affect compliance with obligations arising out of this Order.

**16. COURT COSTS**

16.1 All costs associated with the filing and distribution of this Judgment and the Complaint and any other incidental costs or expenses incurred thereby shall be borne by Defendants. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED.

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Chancellor

FOR THE STATE OF TENNESSEE:

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PAUL G. SUMMERS  
Attorney General & Reporter  
B.P.R. No. 6285

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MICHELLE R. POLAND  
Assistant Attorney General  
B.P.R. No. 019544  
Tennessee Attorney General's Office  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 741-1020

Approved by:

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DAVID A. MCCOLLUM  
DIRECTOR  
Division of Consumer Affairs  
Department of Commerce and Insurance  
500 James Robertson Parkway  
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(615) 741-4737

FOR DEFENDANTS:

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CRAIG J. DONALDSON  
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Knoxville, Tennessee 37901  
Telephone: (865) 546-7311  
Facsimile: (865) 524-1773

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Michael A. Wilson  
Title: President  
Wilson Tours, Inc.  
Federal Taxpayer ID #:  
Current address:

Current telephone number:

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Michael A. Wilson, Individually  
Social Security #: \_\_\_\_\_  
Residential address:     109 Mariner Point  
                                  Clinton, Tennessee 37716

Residential telephone number: 865-463-2321